

UNAPPROVED MINUTES
CITY OF MILPITAS

Minutes: Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)

Date of Meeting: September 16, 2003

Time of Meeting: 6:00 p.m. (Closed Session)
7:00 p.m. (Regular Session)

Place of Meeting: City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez (arrived at 6:01 p.m.) and Polanski. Councilmember Livengood was absent.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the one item listed on the agenda:

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

(Pursuant to Government Code Section 54956.9[c])

Initiation of Litigation: One Case

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:03 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez and Polanski present. Councilmember Livengood was absent.

CLOSED SESSION ANNOUNCEMENTS

There were no closed session announcements.

PLEDGE

Mayor Esteves led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of September 2, 2003, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Dixon, Polanski. Ayes: 4 Absent: 1 (Livengood)

SCHEDULE

Vice Mayor Dixon reported there would be a Congestion Management meeting at San Jose City Hall on September 18, 2003, at 10:30 a.m. and the Silicon Valley Rapid Transit PAC had rescheduled its September 24, 2003, meeting to a new date to be determined in October.

Mayor Esteves reported the Association of Bay Area Governments would hold a meeting at 7:30 p.m. on September 18, 2003.

MOTION to approve the Schedule of Meetings as amended.

M/S: Gomez, Dixon. Ayes: 4 Absent: 1 (Livengood)

PRESENTATIONS

Venna Bishop, San Jose Area Chair, Employer Support of the Guard and Reserve, an agency of the Department of Defense, commented that Information Services Director Bill Marion, a member of the Reserves, had nominated the Council and the City of Milpitas for an ESGR "Patriot" Award and presented each Councilmember with a certificate. Mr. Marion introduced Milpitas employees Staff Sgt. Dane Garis, a member of the Fire Department, and Navy Petty Officer 1st Class Soliman Marasigan, from the Public Works Department, who were also serve in the Reserves. Mr. Marion presented the Mayor with a plaque recognizing the City of Milpitas for supporting its employees while they serve our Nation. Ms. Bishop asked anyone in the audience who ever served in the Armed Forces to stand; the audience acknowledged those standing with applause. Mayor Esteves expressed appreciation for the

recognition and asked the members of the audience who had served in the Armed Forces to stand again and be recognized.

Mayor Esteves said he had a Certificate of Appointment for Judi Leonard, who was recently appointed to the Parks, Recreation, and Cultural Resources Commission. Ms. Leonard was not present.

Mayor Esteves presented Greg Haas with a Certificate of Recognition for his leadership, perseverance, and civic engagement that served as a catalyst for the development of the Milpitas Dog Park. Mr. Haas thanked the Mayor, Council, and staff for the cooperation the community received in providing the Milpitas Dog Park and invited everyone to the Grand Opening on September 27.

Mayor Esteves read a Commendation recognizing the members of the Sunnyhills Preservation Project for receiving the 2003 Governor's Historic Preservation Award and presented it to Julia Jones, Vennie Holloway, Herb Holloway, Irene Jefferson, Billy Jefferson, and Yollette Merritt. Vennie Holloway, on behalf of the group, thanked the Mayor and Council for the acknowledgment.

Mayor Esteves introduced Morris Goldstein, a former Milpitas Unified School District music teacher and current instructor at the South Bay School of Music Arts, and Gilbert Tong, a Materials Scientist/Research Engineer with Caliper Technologies Corp., members of the South Bay Chamber Players and presented them with a Commendation for sharing their musical talent with the community on many occasions. Sonia Bui and Erwin Gonzalo were unable to be present. Mr. Goldstein and Mr. Tong said it had been a pleasure to perform for the Milpitas community.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Jeff Davis said he has been a resident for five years and was representing a group of concerned citizens who have attended several of the Community Advisory Commission (CAC) meetings. Mr. Davis further stated they had brought issues to the CAC and felt nothing was happening; some of the issues were too many cars on the streets and too many people living in a home; they had made suggestions such as parking permits for cars, posting for street sweeping and enforcing it with tickets, and re-evaluating the City's position on allowing garage conversions. Mr. David said these issues were just the tip of the iceberg, they had taken their issues to the CAC, and asked the Council to address them, they would continue to go to the CAC, and their some 50 members would continue other things. Mayor Esteves said staff would be contacting Mr. Davis for the locations of the issues he was talking about.

ANNOUNCEMENTS

Councilmember Polanski, addressing the comments made by Mr. David, commented that the Community Advisory Commission would be holding a Town Hall meeting on Thursday, October 9, 2003, at 7:00 p.m. in the Community Center auditorium to discuss some of the issues Mr. Davis raised, the CAC has been looking at the things Mr. Davis discussed and a lot of those things would be coming to the Council. Councilmember Polanski thanked staff and everyone who attended the September 11th Memorial Service and reported that she attended the League of California Cities meeting in Sacramento and had brought back some materials to share.

Vice Mayor Dixon congratulated staff for putting together a beautiful tribute on September 11th. Vice Mayor Dixon said she also attended the League of California Cities meeting in Sacramento and commented that the overall feeling and attitude of other elected officials was a lot of anger about imposed mandates and take-away of local funds; she attended some sessions on ethics and brought back video tapes, which she would send on to the CAC. Vice

Mayor Dixon further reported that the VTA Policy Advisory Committee had scheduled on its October agenda the request by Milpitas to the VTA Board for a reorganization and she would report back after that is heard. Vice Mayor Dixon requested that staff schedule a public hearing on the unacceptable level of odor coming from the San Jose operated compost facility, commenting that it has never been this bad and since the facility was located right on the border, many people think the odor is generated out of Milpitas.

Mayor Esteves congratulated staff on the City's selection to receive funding under the Clean Safe Creeks and Natural Flood Protection Trails & Open Space Grant Program for both Coyote and Berryessa Creeks. The Mayor wished everyone a Happy Children's Moon Festival.

Councilmember Gomez, referring to the overcrowding issue raised earlier, asked that staff provide an informational memo explaining who has jurisdiction over overcrowding and how that agency determines what constitutes overcrowding. Councilmember Gomez acknowledged Santa Clara Valley Water District Director Richard Santos, who was present in the audience, and thanked him for taking the time to be present.

Richard Santos, SCVWD Director, said it was the District's pleasure to put together the grant, which was part of Measure B money and money set aside for trails, for the enhancement of Milpitas, which was his District. Mr. Santos further stated he hoped the Council would support the resolution on the Consent Calendar.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Livengood)

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. City Manager Thomas Wilson said staff would request that item 7, the response to the Grand Jury report, be added to the Consent Calendar. Mayor Esteves said he had a few questions about the report and would prefer to leave it off consent.

Vice Mayor Dixon requested item 8 be removed for discussion. Mayor Esteves said he would like item 19 removed for information on the third payment request.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of items 8 and 19, in accordance with the staff recommendations.

M/S: Gomez, Dixon.

Ayes: 4

Absent: 1 (Livengood)

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Commission Appointments

Approved the following Mayor's appointments and re-appointments to Commissions:

Arts Commission

Reappoint Barbara Barrie to a three-year term expiring October 2006.

Bicycle Transportation Advisory Commission

Appoint Miljon Buquing to fill the vacancy in the Alternate 2 position, for a term to expire August 2005.

Recycling and Source Reduction Advisory Commission

Appoint Eulalio Mercado to the Alternate 2 position, for a term expiring October 2005

Senior Advisory Commission

Appoint Joyce Dovel to the Alternate 2 position, for a term expiring December 2003.

Sister Cities Commission

Appoint Roselda Mateo to the Alternate 2 position, for a term expiring September 2005.

Reappoint Willie Iringan and Satnam Chahal to three-year terms expiring September 2006.

Youth Advisory Commission

Appoint Van La to the Alternate 3 position, for a term expiring September 2004.

- *5.
Family Child Care
Assistance Grant**
- Approved a \$500 grant from the Individual Family Child Care Assistance Fund to Ms. Rosa Ruiz.
- *9.
Youth Advisory Commission
Bylaws Amendment**
- Approved amendment to Youth Advisory Commission Bylaws as recommended by the Commission.
- *10.
Terrorism Grant Funds**
- Approved the allocation of the Terrorism Grant Funds, in the amount of \$26,587.60 to the City of Milpitas from the Santa Clara County Office of Emergency Services.
- *11.
State Air Resource Board
Air Emission Reduction
Regulations**
- Authorized the Mayor to sign letter requesting changes to the Air Resources Board's proposed diesel reduction regulations.
- *13.
Memorandum of Consensus
SCVWD**
- Adopted Resolution No. 7346 supporting Memorandum of Consensus between representatives of Milpitas, the Santa Clara Valley Water District (SCVWD), Santa Clara County, other cities in Santa Clara County, the environmental, business and development communities, the Santa Clara County Farm Bureau, the Guadalupe Coyote Reserve Conservation District, the California Regional Water Quality Board, and Creekside Property owners
- *14.
Contract Change Orders
(Project No. 4180)**
1. Adopted Resolution No. 7347 granting initial acceptance subject to a one-year warranty period and reduction of the faithful performance bond to \$79,484.50 for Montague Expressway Widening and signal Work (Project No. 4180)
 2. Approved the following four contract changes:
 - (a) A concrete cap over existing PacBell lines and additional work to avoid these lines, for a sum of \$33,504.00;
 - (b) Furnish black vinyl chain link fencing and gates for a sum of \$10,880.48; and
 - (c) Additional roadway excavation for the construction of a box culvert wall for a sum of \$30,380.00; and
 - (d) Cost of using Highway Patrol to perform traffic control during signal shutdown for a sum of \$5,162.00.
- *15.
Crossings Apartments
(Project No. 3088)**
- Adopted Resolution No. 7348 granting final acceptance and releasing the bond for the Crossings Apartments (Project No. 3088)
- *16.
2003 Street Resurfacing
(Project No. 4182)**
- Approved a change order in an amount of \$30,000 to Interstate Grading and Paving, Inc. for 2003 Street Resurfacing (Project No. 4182).
- *17.
Senior Nutrition Contract**
- Approved the contract and authorized payment to Bateman, Compass Group USA, Inc. for July 1, 2003, through June 30, 2004, not to exceed \$3.55 per meal. Sufficient funds have been approved in Recreation Services' FY 2003-2004 operating budget.
- *18.
CAL-ID invoice**
- Approved CAL-ID invoice to the City of San Jose in the amount of \$57,431 for the automated fingerprint storage and retrieval system for fiscal year 2003-2004.
- *20.
Payroll**
- Approved the Payroll Register ending August 23, 2003, in the amount of \$1,629,937.96.

PUBLIC HEARINGS

**1.
BART Extension
Alternatives**

Principal Transportation Planner Jose Oliva reported this was a status update on the BART extension to Milpitas/San Jose/Santa Clara, commenting there had been a lot of activities taking place, and introduced Lisa Ives, Principal Transportation and BART Extension Project Manager for the Valley Transportation Authority, who would be making the presentation, and recognized Malcolm Quint, BART Long Range Planning Manager, who was present in the audience.

Lisa Ives explained that the PowerPoint presentation she would be using would address the purpose, the strategy and goals, BART extension alternatives, the Minimum Operating Segment (MOS) scenarios, and the next steps in the process. Ms. Ives reported the Federal Transit Administration had asked that a Minimum Operating Segment alternative be developed to reduce overall project cost and as a result, reduce the Federal funding share, which would make the project more competitive in the FTA New Starts process. Ms. Ives said that even though the VTA was going through this process, the VTA remained committed to the full project as the voters voted and this MOS process needed to be done to help get Federal funding. Ms. Ives reviewed the strategy and goals and the four different MOS scenarios, reporting that MOS 1-D was brought forward to the Policy Advisory Board on September 5, the PAB gave direction to go out to the public and get input, eight public meetings had been held, and the PAB also directed staff to look at other scenarios. Ms. Ives reported that after presenting all the information to the public, it would be brought back to the PAB to select one of the scenarios for further analysis and further evaluation in the environmental document, the Draft EIS/EIR document with the incorporated MOS scenario would be resubmitted to the FTA and the Draft EIS/EIR circulated for public review.

Vice Mayor Dixon commented that it was unanimous by the Board to delay the decision and she was glad for it. Vice Mayor Dixon, referring to the environmental report, inquired if MOS 1-D was selected and did not include the other stations, would we be required by law (after a certain amount of time) to go back and redo/amend the environmental study? Ms. Ives responded since the VTA was committed to building the entire project, the environmental document and the FTA's New Starts Process would continue to recognize the full project; therefore, the environmental document would clear the entire project. Vice Mayor Dixon inquired if there was logic in having the Market and Diridon Stations so close in proximity. Ms. Ives said the logic was to go with the four highest ridership stations and there were significant inter-modal connections at all four stations.

Councilmember Polanski, referring to documents the Council received that showed the Alum Rock and Berryessa Stations would have about 11,000 riders for each station, inquired if they are not built until later, where would those riders go to ride BART? Ms. Ives responded the initial projections showed those heading north would go to the Capitol/Montague Station and there was the probability that those going south would be lost to Light Rail.

Mayor Esteves inquired if the MOS would have an impact on the schedule of the project. Ms. Ives said the VTA's goal was to build the entire project in phases and this process would help get funding for the first phase. Mayor Esteves asked if this project was independent from the extension of BART from Fremont to Warm Springs, when would it open, and what was happening to the Calaveras Station. Ms. Ives responded that BART was taking the lead on that project, it was projected to open in 2008, and the Calaveras Station was also being carried forward in the environmental document and would be fully environmentally cleared.

Mr. Oliva reviewed the staff recommendation, noting that it was different than 1-D because it included an East San Jose station to help reduce the impact on Milpitas. Vice Mayor Dixon inquired if staff would be working with the VTA to make a recommendation to drop one of the downtown stations or was staff looking at adding a station to the MOS. Mr. Oliva responded staff felt alternative 1-D did not serve Milpitas in the best way and would like to work with the VTA staff to develop another MOS that doesn't hurt Milpitas. Vice Mayor Dixon commented that there hadn't been time to discuss this with the Transportation

Subcommittee and she would expect to have this on the Transportation Subcommittee's agenda for its next meeting.

Mayor Esteves opened the public hearing and invited comments.

Ed Connor said he just talked to a CEO of a company about another transportation system somewhere in the United States which far exceeded what had been presented; he would be receiving videos on the system that he would like to share with the Council, and the real feature of this system was that it has power on board and required one-third to one-half the cost to install. Mr. Connor further stated he thought this was something that should also be considered; if the decision was to go ahead with BART, he had no problem but the terminals should make provisions for something that Milpitas would like to look at, and recommended that the City of Milpitas look into having its own system like a monorail.

David Richerson said the he and a fairly large number of Milpitas citizens have been working on this in a community working group and he was glad to see these meetings happening; he thought it definitely had a positive impact because virtually everyone was looking at some modification of alternative 4; deferring all three eastside stations would impact Milpitas; he would like to see the Alum Rock Station added to MOS 1-D; and he really didn't see an problem swapping Market Street for Alum Rock because the only advantage Market has over Diridon was the light rail connection.

MOTION to close the public hearing.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Livengood)

Motion

Vice Mayor Dixon offered a MOTION that instead of the staff recommendation to direct staff to work with the VTA to develop an alternative MOS scenario, she would still like the opportunity to discuss this at the Transportation Subcommittee with every desire to do what was best in the long run for the City of Milpitas because Milpitas would be impacted. Councilmember Polanski seconded the motion for discussion.

Councilmember Polanski asked if it was important for the Council to put forth a strong stance for the PAB Board. Vice Mayor Dixon said absolutely; this was the Council's opportunity to discuss the issue and that was why she brought this to the full Council so she would know how her colleagues felt; she felt if 1-D is approved, there will be major impacts on Milpitas even though the intent was to build the whole route because there would not be adequate parking. Vice Mayor Dixon further stated additional information needed to be worked out and she needed to hear from this Council what its thoughts were tonight. Councilmember Polanski said she didn't like 1-D because it didn't include an Alum Rock Station; if these were the only scenario that could go forth and something can't be worked out with VTA, scenario 1-C did include Alum Rock and that would be her preference because she felt those 22,000 riders, if Alum Rock and Berryessa were delayed, would come into Milpitas.

Mayor Esteves inquired for clarification if the Council approves having this discussion at the Transportation Subcommittee meeting and directs the Subcommittee to make that decision for the Council, would it need to come back to the Council for approval. City Manager Wilson clarified that the recommendation was being presented to the Council because there had not been an opportunity to reach the Subcommittee before this Council meeting; the Council's next meeting was October 7, 2003, and if the PAB meets after that date, it would allow the Transportation Subcommittee to advise the Council, for the Council to debate that advice, and direct the Vice Mayor before the PAB; however, it appeared the next PAB meeting may be on October 6 or 7 and that was why staff was suggesting tonight that the Council provide direction to the Vice Mayor in case the item could not be considered by the Subcommittee.

Councilmember Gomez said he agreed with the rest of his colleagues, thought the Council needed to take a strong stance, and his preference would be the Alum Rock Station. Councilmember Gomez further stated that with San Jose doing a General Plan amendment for

the whole Berryessa Flea Market area, there was potential for future public/private development in that area to fund a Berryessa Station, the likelihood of getting public/private funding for Berryessa was more than for the Alum Rock area, and felt this Council should push for the Alum Rock Station.

Motion Amended

Vice Mayor Dixon inquired if the Council would be comfortable with her revising the motion back to what it stated on the agenda but more specific -- for staff to work with the VTA to develop an alternative MOS scenario that included Alum Rock and, but not necessarily tonight, make a directive back to the VTA about the San Jose site. Councilmember Polanski said the second to the motion was okay with the change.

Mayor Esteves said he agreed because currently Alum Rock may not have the highest ridership but felt it had the highest potential because of its location and would alleviate major potential problems for the Montague/Milpitas Station.

VOTE ON MOTION AS AMENDED: Ayes: 4 Absent: 1 (Livengood)

**2.
Parc North Vesting Major
Tentative Map**

Assistant Planner Troy Fujimoto reviewed the project to subdivide a single 7.3 acre parcel into 18 separate parcels; showed slides of the area with the Parc Metropolitan residential development and the Great Mall Shopping Center to the south, to the north the rail yards, to the east railroad tracks (future BART line as well as industrial uses), and to the west the Elmwood Correctional Facility and Main Street; and described the proposed Vesting Tentative Map of the 7.3 acre site that would be subdivided into 18 parcels with a condominium plan for 285 two and three bedroom units that would be submitted as part of the final map. Mr. Fujimoto also reviewed the staff recommendation to approve the Vesting Major Tentative Map based on the findings and special conditions, as well as the added findings distributed to the Council this evening.

Vice Mayor Dixon, relaying a message from a resident of Parc Metropolitan, questioned if the management company and the CC&Rs for Parc North were going to be combined with the same management group or would they have separate CC&Rs? Mr. Fujimoto responded it was staff's understanding that Parc North would have its own Homeowners' Association and its own CC&Rs and would not be combined with the Parc Metropolitan. Vice Mayor Dixon said she was very pleased with the project and congratulated staff for working so well with this.

Mayor Esteves opened the public hearing and invited comments.

David Richerson said he felt Parc North was going to be a very excellent project; his only concern was that Parc North was on the north side of Curtis Avenue, the south side of Curtis was already built out, and he didn't want anything to be done to Curtis Avenue that in any way would prohibit the potential future connection across the railroad tracks between Curtis Avenue and Yosemite.

MOTION to close the public hearing.

M/S: Dixon, Polanski. Ayes: 4 Absent: 1 (Livengood)

MOTION to approve the Parc North Vesting Major Tentative Map (P-MA2003-1) based on the findings and special conditions contained in the Council's agenda packet, including the additional four findings.

M/S: Dixon, Polanski. Ayes: 4 Absent: 1 (Livengood)

**3.
Community Development
Block Grant Performance Plan**

Principal Housing Planner Felix Reliford reported staff was submitting the Consolidated Annual Performance Evaluation Report (CAPER) as required by the Department of Housing and Urban Development (HUD). Mr. Reliford further reported that as part of being a Community Development Block Grant entitlement city, the CAPER report evaluated the

City's CDBG programs and activities undertaken during the last CDBG program for 2002/2003; the report identified and highlighted the City's major accomplishments; as required by the City of Milpitas CDBG Citizen Participation Plan, the review of the CAPER report was advertised for public review and comments from August 25th to September 12th; copies were also sent to public service providers that received CDBG funds and also made available at City Hall and the Public Library; the only comment staff received on the CAPER was from the Support Network for Battered Women, which stated that the number of shelter beds in their facility had changed from 20, as stated in the draft report, to 18; and staff would incorporate the revised comment into the document prior to forwarding it to HUD.

Vice Mayor Dixon inquired with the approval of the Parc North item, was the Report going to be amended before it is forwarded. Mr. Reliford responded the CAPER Report was the past performance evaluation; the 285 units, of which 58 units would be affordable, would be shown in the next action plan (next year).

Vice Mayor Dixon inquired if there was anyone in the audience from the Support Network for Battered Women. There was no one. Vice Mayor Dixon expressed concern that recently three women had been murdered, due to domestic violence, in three different parts of town and three different cultural backgrounds and she would like to know more of what the Support Network for Battered Women and the WATCH program were doing to try and get more information out there; she would like to see if they have something a little more tailor-made for the City of Milpitas because it is so culturally rich and some members of the community find it very difficult to reach out for help. Vice Mayor Dixon commented that this had nothing to do with the report but she just wanted more interaction with the groups.

Mayor Esteves opened the public hearing and invited comments. There were no comments.

MOTION to close the public hearing.

M/S: Dixon, Gomez. Ayes: 4 Absent: 1 (Livengood)

MOTION to adopt the Consolidated Annual Performance Evaluation Report for FY 2002-2003.

M/S: Dixon, Polanski. Ayes: 4 Absent: 1 (Livengood)

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:16 p.m.

**RA2.
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez and Polanski. Agency/Councilmember Livengood was absent.

**RA3.
MINUTES**

MOTION to approve the Redevelopment Agency minutes of September 2, 2003, including joint meeting with the City Council, as submitted.

M/S: Gomez, Dixon. Ayes: 4 Absent: 1 (Livengood)

**RA4.
AGENDA**

MOTION to approve the agenda and consent calendar as submitted.

M/S: Gomez, Polanski. Ayes: 4 Absent: 1 (Livengood)

**RA5.
UNAUDITED FINANCIAL
REPORT FY ENDED 6-30-02**

Finance Director Emma Karlen reported the Finance Department recently closed out various funds for Fiscal Year 2002/03 in preparation for the annual audit, preliminary data was now available to provide the Council with an overview of the General Fund financial status as of June 30, 2003, staff did not expect the audit would change in any substantial way, and the audit results would be presented to the Council in November. Ms. Karlen further reported the

results showed that total revenue and other financing sources were approximately \$830,000 below budget; about \$3.2 million of General Fund reserves would be utilized to close out the year; cost savings City-wide for the General Fund were approximately \$8.3 million; and instead of using \$6.1 million of the Reserves as originally projected, \$3.2 million would be used. Ms. Karlen, using a PowerPoint presentation, reviewed the revenue shortfalls and savings.

City Manager Wilson said he wanted to take this opportunity to thank the entire organization because, as Ms. Karlen indicated, there was good and bad news in this report; the bad news was that we do not have the ability to control the economy other than encourage people purchasing in the community and so we have been ultimately victims of the recession, which has been particularly difficult for the Bay Area; the good news was that we can control the expenditure side; and with an incredibly reduced budget, what the unaudited figures showed was that the organization responded dramatically and instead of expending, as the Council had approved, potentially \$6.1 million of reserves, only a little over \$3 million of reserves would be spent. Mr. Wilson further stated this was an incredible accomplishment and thanked all the departments, the department leadership, and every employee for their contributions geared to providing a continuing high level of services within the most efficient means possible that made it possible during very difficult circumstances to have the comfort that we are going to be able to manage, to continue services, and actually maintain reserves to the higher level. Mr. Wilson explained the \$1 million of extra savings in relation to personnel costs was based upon shrinkage of the organization and to new vacancies that were frozen across the organization, meaning that staff is doing more with fewer people and fewer economic resources. Mr. Wilson said he wanted to take this opportunity to congratulate the entire organization and, in particular, focus on the leadership from all the Department Directors and Supervisors.

Vice Mayor Dixon said she thought a lot of the credit should go to the top administration and that was the City Manager, Mr. Wilson, and Mr. Blair King, the Assistant City Manager, and to Ms. Emma Karlen, Finance Director; she was quite astounded to see that the amount was half of what was expected; having just come back from Sacramento listening to colleagues up and down the State, cities are hurting and many cities were just now going into the freezing of positions, laying off people, doing away with and reducing services; and Milpitas has not had to do any of that except freeze positions. Vice Mayor Dixon thanked staff and Mr. Wilson, in particular, because he provided the Council with the guidance to have the courage to make a lot of decisions.

Mayor Esteves inquired if, after the audit was complete, it would be possible to have some type of financial score card or benchmarks established for the City to know how good we are doing. Ms. Karlen responded the Council would be provided with benchmarks, noting that it was part of the budget document.

MOTION to note receipt and file.

M/S: Polanski, Dixon.

Ayes: 4

Absent: 1 (Livengood)

***RA6.
TRAVEL REQUEST**

Approved out-of-state travel request for the Mayor, Vice Mayor, City Manager, Assistant City Manager, and the Finance Director to travel to New York City for presentations of the Redevelopment Agency's proposed 2003 tax allocation bond issue to financial rating organizations and bond insurers on September 30th, with meeting days of October 1 and 2, and a return travel day on October 3.

***RA7.
OWNER PARTICIPATION
AGREEMENT PARC NORTH**

Adopted Resolution No. RA214 of the Redevelopment Agency approving the execution of an Owner Participation Agreement with Parc North Associates LLC and making certain findings.

**RA8.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 8:32 p.m.

The City Council meeting continued.

NEW BUSINESS

6. Consider Sidewalk Ordinance

Assistant Manager Blair King reported there were approximately 200 miles of sidewalks in Milpitas; there were extensive portions of the Milpitas Municipal Code that dealt with a variety of municipal issues and how private property owners transact with them, including street trees; but, sidewalks did not have a chapter or section in the Milpitas Municipal Code discussing sidewalk maintenance and liability; and staff wanted to discuss how Milpitas maintained its sidewalks, issues associated with liability and cost, and present some alternatives and suggest a path that may be followed to explore the alternatives.

Mr. King further reported that currently Milpitas spends approximately \$175,000 to \$235,000 a year to maintain sidewalks, the cost of maintenance was going up, and the City bears 100 percent of the cost for sidewalk maintenance but many other cities do now. Mr. King also reported that California Law allows cities to give responsibility for maintenance of sidewalks to the fronting property owner, which was a way to transfer costs to the property owner, many cities had chosen to use that policy and the courts had ruled that cities, via their Municipal Code, may hold property owners responsible for third parties who are injured as a result of a property owner's failure to maintain the sidewalk.

Mr. King said staff was suggesting that the Council direct staff to develop an ordinance that would allow the City to have the fronting property owner be responsible for the maintenance of the sidewalk; however, in addition to that, staff was also suggesting that the Council also direct staff to prepare a policy for an automatic grant program to pay the repair costs for owner-occupied units similar to a model in San Jose. Mr. King further stated it was estimated this type of program would save the City approximately \$50,000, would reduce liability exposure, and provide the ability for the City to defend against substantially large settlements. Mr. King noted ABAG was encouraging its member cities to adopt such an ordinance, and Milpitas would probably reference an ordinance off of the ABAG model.

Mr. King reviewed the staff recommendation to direct staff to draft such an ordinance, review the ordinance draft with the CAC or some other policy advisory body, and then, depending upon the recommendation, bring it back to the Council where a public hearing would also be held.

Councilmember Gomez, referring to grinding and replacement of sidewalks, inquired if it was done in house or contracted out. Mr. King replied for the most part, the City does the grinding using the Public Works crews. Councilmember Gomez inquired if staff was recommending that grinding also be paid for by the property owner or would it be separated out from repair and replacement. Mr. King said any cost of repair, whether grinding or replacement, would be the property owner's responsibility, and staff was proposing for residential – the owner/occupied properties – that there be no financial impact to them – for all other properties, they would be financially responsible. Councilmember Gomez inquired what the cost of grinding as opposed to repair and replacement was. Mr. King said he was not able to answer but basically it would be the cost of personnel time (assuming a two-person crew using equipment at \$20/hour – an hour or two). Councilmember Gomez said he knew some other jurisdictions that don't charge for grinding and although he was okay with the exploring the option, he was concerned with repairing a sidewalk for a company or tenant/occupied house where somebody could certainly afford it; and thought it was the way to go if a grant were going to be provided or some assistance for owner/occupied buildings.

Mr. King said part of the philosophical thinking was that a property owner could not necessarily write it off; for commercial property, the maintenance of property was part of the cost of doing business and it could be a write-off; therefore, staff was trying to be equitable and fair in how the issue was being approached.

Vice Mayor Dixon inquired if it was staff's position that all residential homeowners would be excluded from this. Mr. King said that was correct; staff was proposing (the way the ordinance would read) all property owners would be responsible for maintenance of their sidewalk pursuant to the 1911 Sidewalk Act; with that would be a program proposed that would provide an automatic grant to pay the costs for owner/occupied units; so, as a practical matter, owner/occupied units would not have to pay for the maintenance of sidewalks. Vice Mayor Dixon said one of her major concerns was that residents would try to do the work themselves and there would be an inconsistent look and hoped some type of measurement of consistency would be included in the ordinance. Mr. King said the policy would propose to the Council that owner/occupied residential units would not pay for their sidewalk repair; they would, through the course of City inspection or they could call and the City would come and repair their sidewalk to standards; in terms of commercial property, there were standard details for sidewalks, they would have to obtain an encroachment permit; the encroachment permit would describe who would do the work, provide the standard detail, and so, the sidewalk would be repaired and inspected by the City to determine if the qualify met the City standards. Vice Mayor Dixon said she would be in favor of looking into this further, but would like to have it sent on to the Community Advisory Commission and probably the Planning Commission.

Councilmember Polanski inquired if a policy to give the residents grants could be changed by a future Council. Mr. King said that was correct. Councilmember Polanski further inquired if there was a reason it wouldn't be in an ordinance. Mr. King responded no, the exemption could be carved out within the ordinance; however, it was more common (under the 1911 Act) to just straight forward have the fronting property owner maintain the responsibility for maintenance of the sidewalk – it was typical policy in California cities; staff felt that this was a good solution since it very closely mirrored the San Jose policy. Councilmember Polanski inquired if part of the reason for doing this had anything to do with insurance with ABAG or the City's liability insurance. Mr. King said it was a cost savings measure, it was consistent with the contemporary view of municipal management, nothing prevents the City from maintaining the sidewalks; however, State law allows, as a relief in terms of how cities maintain their sidewalks, the fronting property owner to maintain the sidewalks as a part of their property; what staff was proposing in this particular form was that there be a program in place and that residential property owners as a practical matter would not have to pay for the maintenance of their sidewalk; the Council could direct staff to address and draft the ordinance to carve out that responsibility for residential property owners; staff still believed there should be clear language that states that residential property owners are liable to third parties for failure to maintain their sidewalk in a safe condition.

Councilmember Polanski said she had no problem looking at this but it should definitely go to the Community Advisory Commission and probably have it as a discussion item for their Town Hall meeting coming up on October 9th; and agreed that the Planning Commission should also see it.

Mayor Esteves, referring to the \$50,000 savings, stated basically this was a cost to maintain the non-owner/occupied. Mr. King said that was correct. Mayor Esteves inquired if staff was saying that everyone was eligible regardless of economic condition. Mr. King responded that was correct. Mayor Esteves asked in terms of liability to residents, how much had the City incurred already per year on third-party liabilities. Mr. King responded the City averages about four or five claims a year; the claims average from about \$5,000 to \$6,000; they were not large claims; and Milpitas had been very fortunate in that claims could be high dollar claims (\$100,000/\$200,000). Mayor Esteves said it was a potential savings and inquired if the liability would be covered under the homeowners insurance because he didn't want to put an additional burden on the homeowner. Mr. King responded that was correct and directed the Council's attention to the City Attorney's memorandum stating there was some litigation over that particular policy and was currently on appeal in the Appellate Court; people like to go after the deep pockets, and there were some attorneys who did not like the cities shifting the liability to the property owner. Mayor Esteves inquired if there was a potential that the homeowner's insurance premium would increase. Mr. King said he supposed that could be

the case. Mayor Esteves asked that staff provide some analysis/options of things that the City could do to provide more options so there isn't a fiscal impact on residents. Mayor Esteves, referring to permitting, inquired if the permitting would also be reimbursable. Mr. King responded it would be if it were owner/occupied. Mayor Esteves expressed concern for minimum disturbance on the property owner and requested staff address permitting as well. Mr. King said permitting could be addressed and described -- it was a fairly standard system.

Vice Mayor Dixon said she understood why ABAG would be insistent upon cities that they insured to follow the same suit, but she had a nagging feeling that this was -- not necessarily right now but potentially over the next decade -- could end up being very costly to homeowners and, as a part of this (if it were to be followed through), suggested some community outreach be put together; and she agreed with the Mayor that this could be a burden, a dramatic change that the City would be instituting. Mr. King suggested a way to mitigate the potential of the homeowner's insurance increasing was that the City would be offering to the homeowners free sidewalk repair; the homeowner might be liable for a trip-and-fall claim, but that could be mitigated that by ensuring the sidewalk was safe.

David Richerson said the liability wasn't the sidewalk or the property owner who owns the property running under the sidewalk regardless of any law written in 1911; the root of the problem is the trees whose root systems spread out shallow and lift up the sidewalks, and those trees are City owned in the park strips; his sidewalk was just replaced for the first time in approximately 30 years; the only reason it needed it was because the tree had been heavily watered, unlike the previous 2-3 decades where the tree was starved of water and kept very stunted; in going for Neighborhood Beautification and big trees, the City was taking the liability right at the root of the problem because it was the roots of the trees causing uplifting on the sidewalks; as far as the owner/occupied, he said he was insulted by that; if his house is owner/occupied and his next door neighbor was second or third generation living in the house, but the owner was retired and living in Florida, that second or third generation would have to pay to replace the sidewalk, yet he wouldn't because his house is owner/occupied; and he thought it needed to go through the Community Advisory Commission and Planning Commission.

MOTION to direct staff to draft a "sidewalk ordinance" with more background information included (more studies), and consistent with Streets and Highways Code, 1911 Act, to generally require abutting property owners to maintain sidewalks and to hold property owners responsible for third parties injured as a result of the property owner's failure to maintain sidewalks; and as a companion to the ordinance, direct staff to prepare a policy that allows the City to pay the cost of sidewalk repairs for owner-occupied residential units, and that it be routed through the Community Advisory Commission, the Town Meeting on October 9, and the Planning Commission.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Livengood)

**7.
2002-2003 Santa Clara Civil
Grand Jury Final Reports**

City Manager Wilson reported this matter reflected reports that had been requested by the Santa Clara County Grand Jury; the Grand Jury made requests under State statute to the City Manager and to the Mayor as representatives of the Mayor and Council; responses were drafted by staff with review by the City Attorney; the City Manager's required response was due 60 days after the request, and it was timely filed; and this was the approval to the response, which was identical to the management response by the Mayor on behalf of the Council.

Mayor Esteves, referring to a letter received from the city of Stockton about its recommendation to have independent performance auditing for local government, said he understood from the letter that in many cities around the country, elected and appointed leaders in local government embrace the independent audit function and take advantage of the opportunities it provides; the recommendation was to have an independent auditor report directly to the City Council; and questioned if Milpitas had internal auditors. Mr. Wilson explained the City did not employ an internal auditor but has an independent outside

comprehensive audit of the City's financial matters and the Redevelopment Agency's financial matters; the auditors were presently in the City; the Council approves the engagement of that independent auditing firm on a periodic basis, and they make their report directly through the Finance Director and the City Manager to the Council. Mr. Wilson said the Stockton letter reflected what some cities in California and across the country have, like a department head, and their role usually is to do internal audits of process and functions – they do not specifically deal with comprehensive, financial audits, but they usually work in the context of limited financial review and performance and process auditing; Milpitas does not have any outside staff or auditors to do those specific things; the outside auditors do provide a process review, which is in the form of a management letter which indicates that in the course of their financial evaluation, they may come upon processes that they believe require improvement, and those are immediately implemented or they're forwarded onto Council and implemented at Council's direction; in the past, there have been few of those generated and they have been implemented or corrected by the Finance Department before the audits.

Mayor Esteves expressed concern that there were processes needing improvement that did not come before the Council. Mr. Wilson explained that if the City had not met a standard that the auditors provide, the auditors make a notation in the audit (a standard auditing process) and it comes in under a draft review, if there are procedural adjustments, they are done; if not, then the auditors make either a qualified audit statement or make a special notation in their audit report; Milpitas' practices do perform very stringently with the auditing practices of California cities and municipal cities across the country; Milpitas has received awards for its budget and its auditing process; the item Stockton was referring to was internal process auditors who often directly report (like the City Attorney and the City Manager) to the Council; the traditional job of an internal auditor is to relate primarily to process in relation to financial matters; the Stockton folks are indicating that in order to get the fullest benefit of such a position, it should be a direct report to the Council – that is the tradition that most cities do have if they employ these kinds of things; otherwise, there is duplication of the Finance Department. Mr. Wilson further stated that if the Council was interested in that kind of a process, it would need to review whether they could be appointed directly under General Law; if you can, then that would be a process; in many cases, you would hire them and they would report to the Council directly under a contract relationship that goes through the normal contract processes.

Mayor Esteves inquired what non-charter cities had regarding this kind of a structure; what benefits do they get when they have their auditor report directly to the City Council against what we have right now. Mr. Wilson said the Grand Jury raised a question in which they asked to have all of the cities in Santa Clara County report to them on the types of audits that were performed in the course of their normal business, and what the Grand Jury found was there were two levels of audits that were provided; Milpitas, at this point, provides only one; if the Council believed that there is a value in internal review of processes, particularly surrounding financial matters, it could employ such an individual/s on staff or bring in an outside firm to review that; the benefits that the Grand Jury related to and the benefits that the cities that do employ this is a confidence level of efficiency of process and maximum internal controls of finances. Mr. Wilson further stated that Milpitas' response was that it did not agree with the Grand Jury that said Milpitas and some cities of our similar size and above should engage in those kinds of periodic audits; however, it was certainly a Council prerogative to evaluate our processes and engage those kinds of audits/personnel/consultants.

Mayor Esteves said he thought it would be a concept that would be very valuable not only in the public sector, but even in the private sector; it's a very hard decision whether Milpitas will need an internal audit function reporting to the City Council; he would like to take a look at it later on and maybe hire somebody to look at the need for this function. Mayor Esteves said he was bringing up this kind of issue that might come back to the Council, he was not ready to say we need or don't need one but wanted to bring this back if the public would give him some information (input) on having the internal audit function reporting to the City Council.

MOTION to:

1. Approve draft letters responding to the 2002-2003 Santa Clara Civil Grand Jury Final Report, "Review of Audits and Financial Reports" and "Listing of Special Districts, Joint Power Agencies, Designated Non-Profit Corporations and Other Governmental Entities"
2. Authorize the Mayor to sign letters to the Grand Jury.

M/S: Esteves, Dixon.

Ayes: 4

Absent: 1 (Livengood)

8. Commissioners Recognition

Public Services Supervisor Jennifer Tagalog explained that staff had received feedback from several Commissioners and decided to recommend something new this year; staff was recommending for the 2003 Commissioner Recognition Dinner hosting a dessert social to be held on July 23, 2004, in the City Hall rotunda and outdoor area near the pond; the event would begin at 7:00 p.m. and provide a great opportunity for the Council, Commissioners, and their respective guests to mingle and socialize; in past years, the Commissioners were given the option of selecting their own gift, which was received at the recognition event; however, at the February 4, 2003, City Council meeting, Vice Mayor Dixon suggested using the \$5,000 funds allotted for the individual Commissioner recognition gift toward a group 50th anniversary gift from the Commissioners; staff was recommending giving the charge of the gift selection to the 50th Anniversary Committee, which was comprised of one or two Commissioners from each Commission; the 50th Anniversary Committee could select a gift (i.e., a piece of art or another item with the 50th Anniversary logo) which could be unveiled at the event; the dessert social would then be followed by a formal presentation with the distribution of the recognition certificate, an unveiling of the anniversary gift, and would allow for a Commission photo opportunity.

Vice Mayor Dixon said she removed this item from the Consent Calendar because she did not remember saying that (about the gift) at that meeting; to the best of her recollection, because it was the City's 50th Anniversary, she thought the gift could have something to do with commemorating the 50th; and, having looked at the option of putting the date off until July 2004, asked for confirmation that the City would be saving \$50,000. Ms. Tagalog confirmed that was correct.

Vice Mayor Dixon suggested, based upon putting the event off until the next fiscal period, having the suggestions routed through all the Commissions as to their desire to have the dessert or a nice hors d'oeuvres event; and regarding a City Hall BBQ meal, inquired if staff had considered going to the Santa Clara County Firefighters. Ms. Tagalog said staff had talked with some caterers but would add the Santa Clara County Firefighters. Vice Mayor Dixon said the idea for having a City Hall and its beautiful outside setting was to have more events and try to save some money; the issue of the Commissioners donating something should be a question to the Commissioners; and inquired if the certificates were \$5,000 and the plaques were an additional \$5,000. Ms. Tagalog responded the plaques were \$5,000, and if it was decided to go with the 50th Anniversary gift, it included the certificates (approximately \$200 for the certificates and folders) and would amount to approximately \$4,800 towards a 50th Anniversary gift.

Vice Mayor Dixon inquired if staff had thought about a way to incorporate the 50th so that each Commissioner received something that commemorates the 50th. Ms. Tagalog said using the logo on top of the certificate holders had been discussed.

Councilmember Polanski said she liked staff's suggestions; concurred with Vice Mayor Dixon's recommendation; and suggested a poll of all Commissioners (individually via telephone or email) be taken to determine their preference for the event as well as the possibility of doing a presentation to the City in lieu of a gift this year.

David Richerson said he really liked the idea of holding the event at the City Hall in July 2004 and combining it with the 50th Anniversary commemoration.

MOTION to

1. Approve holding an event in July 2004
2. Direct staff to survey all commissioners as to their preference for the type of event (dessert, appetizers, BBQ) and the gift (a gift commemorating the City's 50th Anniversary or a 50th Anniversary gift to the City in lieu of individual gifts) and to bring the results back to the Council for a final determination.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Livengood)

ORDINANCE

12. Ordinance No. 239.3 Urban Runoff & Storm Water Pollution Control (Introduce)

Principal Civil Engineer Darryl Wong reported this was a request to repeal and replace the urban runoff and storm water pollution control ordinance; explained that with the new discharge permit, the City was required to make some changes to align its ordinance with the permit issued by the Regional Water Quality Board; the permit goal was to protect the health and safety of the community by prohibiting discharges that could end up into the storm drain and eventually into the water courses and, therefore, cause nuisance conditions; the ordinance aligns itself with the permit by regulating control of pollutants, including sewage, industrial waste, salvage, and refuse; and it also included a new provision that controls/regulates the amount of volume that can now be discharged into water courses that can cause erosion on the banks of the channels.

Mr. Wong reviewed key ordinance provisions and stated the ordinance requires staff to work closely with developers so that they would be aware of what is required would install the proper management facilities on site; it also requires the City establish an inspection program to verify that the systems are properly being maintained and operated; the permit also identified discharges that were not prohibited; there were penalties (there was a criminal penalty clause as well as civil penalties).

Mr. Wong pointed out a typographic error in the ordinance in the penalty section stating that the penalty was \$25,000 (instead of \$5,000) to be consistent with all the other cities; the citation process had not been changed from what was originally listed in the ordinance.

Vice Mayor Dixon, referring to the ordinance affecting redevelopment, asked if that meant City initiated redevelopment. Mr. Wong said that was correct (any redevelopment project). Vice Mayor Dixon inquired if a ball park figure was going to be taken or were we just going to wait until faced with projects. Mr. Wilson said the City was mandated to do this; other cities had been fought with about the issue; an alternative was to pave every permeable surface; this was a compromise that he did not feel was supported as vigorously as staff would like, but it reaches an ability to continue to do business and meet the requirements of the discharge permit; staff did, by its vigorous evaluation, accomplished some compromise issues that did protect the City more than what was originally proposed; and encouraged the Council to accept the compromise for what it was worth.

Mr. Wong read the title of Ordinance No. 239.3.

MOTION to waive reading beyond the title.

M/S: Polanski, Gomez.

Ayes: 4

Absent: 1 (Livengood)

MOTION to introduce Ordinance No. 239.3 repealing and replacing Chapter 16 of Title XI of the Milpitas Municipal Code regarding storm water and urban runoff pollution control.

M/S: Polanski, Dixon.

Ayes: 4

Absent: 1 (Livengood)

19. Miscellaneous Vendors

Mayor Esteves, referring to purchase request No. 3, requested information as to what was the education process that the City has for the Economic Driving School.

Purchasing Agent Lou Zenzen responded the Economic Driving School classes were offered to the public by the Recreation Non-Services Division for students (primarily the High School students) for driving instruction; there was no driving involved; and they were written manual courses required by law to get a permit.

Mr. Wilson added the courses were offered by contract. Mr. Zenzen said the students sign up and pay for the class to offset the cost. Mr. Wilson explained that the Recreation Department provided this service just like it did with certain exercise classes and other classes that are contracted; the process was that the City contracts for the instruction and then the participants register and pay a fee for the privilege of participating in the classes, which recovers the contract cost.

Mayor Esteves asked for confirmation that basically it was no cost to the City. Mr. Zenzen responded that was correct. Mayor Esteves inquired what was limiting the City from opening up more classes. Mr. Zenzen said he thought it was the contract staff. Mr. Wilson confirmed it was the staffing and the space and time availabilities. Mayor Esteves inquired if there were plans to expand the class later on. Mr. Wilson said on an annual basis, it was reviewed with the contracting parties and the City; and as Mr. Zenzen indicated, this year there was a class added. Mayor Esteves asked staff to try and accommodate the demand.

MOTION to approve the following purchase requests:

1. \$5,412.50 to The Active Network for annual maintenance of Recreation Services shared registration and scheduling software. (Funds are available in the Information Services Department operating budget for this service.)
2. \$6,071.15 to Alliance Occupational Medicine, Inc. for miscellaneous medical services and tests, and vaccinations of Public Safety employees. (Funds are available in the Human Resources Department for this service.)
3. \$16,800.00 to Economic Driving School for six drivers education classes of 40 students per class as offered by the Recreation Services Division. (Funds are available from the Planning, Recreation and Neighborhood Services Department operating budget for this service.)

M/S: Esteves, Gomez.

Ayes: 4

Absent: 1 (Livengood)

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 9:35 p.m.

Gail Blalock, CMC
City Clerk

MEMORANDUM

Department of Planning & Neighborhood Services



To: Honorable Mayor and City Council

Through: Thomas J. Wilson, City Manager
Tambri Heyden, Acting Planning & Neighborhood Services Director

From: Gloria Anaya, Sr. Housing & Neighborhood Preservation Specialist
Patricia Joki, Fire Marshal
Edgar Rodriguez, Chief Building Official
Troy Fujimoto, Acting Associate Planner

Subject: Planet Bollywood Restaurant- 750 E. Calaveras Blvd.

Date: September 17, 2003

This memorandum is a follow-up to Vice-Mayor Dixon's request at the September 2, 2003 City Council Meeting for a staff report on the status of the Planet Bollywood Restaurant site, and actions to clean up the neglected appearance of the vacant property.

Background:

As part of the Neighborhood Beautification program, the BFI/Shopping Center Task Force was formed. The Task Force's goal is to review exterior site conditions of shopping centers and business locations city-wide.

Planet Bollywood had their grand opening the first week in July 2002. On July 11, 2002, the task force inspected the premises in response to exterior material storage concerns. Solid waste and unpermitted, on-site cargo storage containers were observed in violation of the Neighborhood Beautification Ordinance. Inside the business, the task force observed Building and Fire Department issues, such as missing ceiling tiles, blocked exit doors and exit signs in need of repair. These immediate issues were discussed with the owner, Mr. Chahal, who corrected these violations during the July 11th visit. A notice of violation was issued on August 2, 2002 regarding the remaining Neighborhood Beautification Ordinance violations observed on the July 11, 2002 task force visit.

Building and Fire conducted their own inspection the premises on July 15, 2002, and a correction notice was issued for electrical work done without benefit of permits. The owner did not respond. However, since the building is vacant with no plans to occupy it, this violation does not necessitate follow-up at this time.

On October 21, 2002, the Bollywood fire occurred and the premises were boarded-up and fenced off to preclude access. Prior to the fire, 95% of the NBO violations had been abated. Based on the fire and access problems, the task force halted its follow-up pending completion of the Fire Department's investigation. The investigation was completed in January 2003. The cause of the fire was arson.

Status/Actions:

A Notice of Violation was issued on September 5, 2003 to correct the following remaining violations by October 6, 2003:

- Remove litter, construction material, machine parts and scrap material
- Abate weeds, mow lawn, and cut back overgrown landscape
- Remove lunch specials banner

Recently, the property owner submitted preliminary site and architectural plans to the Planning Division for construction of two buildings; a two-story office building and a one-story restaurant. The owner plans to demolish the current building on the site to redevelop the site.

Staff will monitor the site to ensure compliance with the September 5, 2003 violations.